

Hey Boss, I need time off to vote.....

With the election on our doorstep and record voter turnout expected, many employers are being barraged with employee requests for time off to vote. Many employers are willing to make reasonable accommodations so that employees can exercise their voting franchise and participate in local and national elections. The best place to begin the process of evaluating how to accommodate schedules is reviewing what employers are legally required to provide in terms of voting leave time.

There currently is no federal law that obligates employers to provide time off to vote. However, the majority of states impose some form of voting leave requirement on both public and private employers.

Although voting leave laws vary widely by state, most include some or all of the following components:

- Guaranteed time off within certain parameters for “voting” as opposed to time off for “voters” (i.e., limiting leave to employees who will actually use the time to vote).
- Defined leave “windows” linked to polling hours in relation to an employee’s regular work hours.
- Required reasonable notice to an employer for leave prior to Election Day.

The following are samples of the approaches taken by various states:

Georgia

Georgia employers are required to allow employees, upon reasonable employee notice, to take “any necessary time off” to vote on the day on which a primary or election is held, up to a maximum of two hours. Such leave may be paid or unpaid at the employer’s discretion. Employers may also specify the hours during which leave should be taken. In addition, if an employee’s work hours start at least two hours after polls open or end at least two hours before polls close, he or she is *not* entitled to voting leave under Georgia law.

See Ga. Code Ann. § 21-2-404.

Florida

There is no employee voting leave law in the State of Florida. However, state law does provide that it is unlawful to discharge or threaten to discharge any employee for voting or not voting in an election for any candidate or for any measure submitted to a vote of the people.

See Fla. Stat. §104.081.

Alabama

An employer must give reasonable time off to vote, not to exceed one hour of leave. Leave obligations do not apply to employees with a work schedule that begins two hours after polls open or ends one hour before polls close.

See Alabama Code § 17-1-5

Tennessee

Employee is allowed a reasonable time (up to three hours) to vote, unless shift starts three hours after the polls open or shift ends three hours before polls close. Employee must provide notice of request for leave by noon the day prior to the election.

See Tennessee Code Ann. § 2-1-106

Texas

Employer may not refuse to allow employee time to vote, although no time limit is specified, unless employee has two consecutive hours of non-work time while polls are open.

See Texas Code § 16-276.004

California

California employers must generally provide employees with “sufficient time” during work hours to vote in a statewide election that, “when added to the voting time available outside of working hours, will enable the [employee] to vote.” Such time must be taken at the beginning or end of a regular work shift, whichever allows the most free time for voting and the least time off from work, unless otherwise mutually agreed. Employers are further required to pay up to two hours of the “sufficient time” taken by employees to vote. As for notice, employers are required to post a notice of California voting leave rights at least ten days before every statewide election. Employees, in turn, must provide notice of their desire for time off at least two working days in advance of the election when they know or have reason to believe time off will be necessary.

See Cal. Elec. Code §§14000-14003.

Illinois

In Illinois, employees who are eligible to vote are entitled to leave for a period of up to two hours during polling hours if the employee’s working hours begin less than two hours after polls open or end less than two hours before polls close.

Such time off is with pay and must not subject the employee to any penalty. However, employers may specify the hours during which voting leave may be taken. In addition, application for voting leave must be made prior to Election Day.

See 10 Ill. Comp. Stat. § 5/17-15.

Maryland

Maryland employers must provide employees with up to two hours of paid leave from work on Election Day “if the employee does not have 2 hours of continuous off-duty [time]” in which to vote while polls are open. No advance notice is required by the statute. However, an employee must furnish “proof” that he or she has voted or attempted to vote in a form prescribed by the State Board of Elections.

See Md. Code Ann., Elec. Law § 10-315.

New York

In New York, employers must allow employees who do not have “sufficient time” outside of working hours in which to vote to take up to two hours of paid time off. Required time off is only allowed at the beginning or end of a work shift, as designated by the employer, unless otherwise mutually agreed. However, if an employee has four consecutive non-working hours in which to vote (either between the opening of the polls and the beginning of a shift or between the end of work and poll close), such time is deemed to be “sufficient”, and an employee is *not* entitled to leave. Employers are required to post a notice of New York voting leave rights at least ten days before every election. Employees, in turn, must provide notice of their desire for time off at least two but not more than ten working days prior to Election Day.

See N.Y. Elec. Law § 3-110.

North Carolina

North Carolina does not have a state voting leave law. However, it is a Class 2 misdemeanor for any person to discharge, threaten to discharge, or intimidate an employee or other individual “on account of any vote such voter may cast or consider or intend to cast, or not cast, or which he may have failed to cast.” In addition, employers are prohibited from discharging or demoting employees because of their appointment or service as a precinct official.

See N.C. Gen. Stat. §§163-41.2 and 163-274.

Pennsylvania

There is no employee voting leave law in the Commonwealth of Pennsylvania. However, employers and other individuals are prohibited from engaging in intimidation or other forms of influence in connection with voting.

See 25 Pa. Cons. Stat. §§ 3539 and 3547.

Virginia

Virginia does not have a state law that requires employee voting leave. However, employees who serve as an election officer must be allowed unpaid time off from work without “adverse personnel action” and cannot be required to use sick leave or vacation time for such service, provided the employee gives reasonable notice of the need for leave. It is also unlawful for any person to “hinder, intimidate or interfere with any qualified voter so as to prevent the voter from casting a secret ballot.”

See Va. Code Ann. §§ 24.2-118.1 and 24.2-607.

District of Columbia

Lastly (and most ironically), the District of Columbia is included in the ranks of the minority of jurisdictions that do not have voting leave laws of any kind. Go figure?

For assistance in analyzing your state’s specific voting leave requirements or addressing any other workplace issues, please feel free to give me a call.

Christopher E. Parker, Esq.

Mozley, Finlayson & Loggins, LLP

One Premier Plaza, Suite 900, 5605 Glenridge Drive

Atlanta, Georgia 30342

Direct Dial: 404-845-1950

Main Line: 404.256.0700

Fax: 404.250.9355

cparker@mflaw.com

www.mflaw.com

NOTICE: This message originates from the law firm of Mozley, Finlayson & Loggins LLP. The message and any file transmitted with it may contain confidential information which may be subject to the attorney-client privilege, or otherwise protected against unauthorized use. The information contained in this message and any file transmitted with it is transmitted in this form based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying or use of the information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. All attachments are believed to be free of viruses, but any attachments should be checked for viruses before being opened. If you have received this message in error, please advise the sender by immediate reply and delete the original message. Personal messages express views solely of the sender and are not attributable to Mozley, Finlayson & Loggins LLP.